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FROM: BERLIN

TO: Secretary of State

NO: 824, JANUARY 15, 9 AM

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JANUARY ISSUE OF EAST GERMAN MONTHLY MAGAZINE "GERMAN FOREIGN POLICY" RECEIVED TODAY CONTAINS ARTICLE REGARDING LEGAL STATUS OF BERLIN BY HERBERT KROEGER. KROEGER IS PROFESSOR AT HUMBOLDT UNIVERSITY AND MEMBER OF EDITORIAL BOARD OF SED THEORETICAL MAGAZINE EINHEIT. HE APPEARS TO BE ONE OF MOST PROMINENT GDR LEGAL AUTHORITIES. (SEE OURTEL TO BONN 350 RPTD DEPT 378, OCT, 1957 FOR EVALUATION THIS MAGAZINE.) WHEN DISCOVERED ARTICLE LIKELY TO ATTRACT ATTENTION OF WESTERN PRESS.

ARTICLE BEGINS BY REFERRING TO LEGAL ARGUMENTS CLAIMING WEST BERLIN IS PART OF FED REP. THIS THEORY SUPPORTED BY HIGHEST REP COURT, THE FEDERAL CONSTITUTION COURT, IN MAY 21, 1957 DECISION. SECOND SENAT OF THIS COURT EVEN SPOKE OF "BERLIN" INSTEAD OF "WEST BERLIN" AND THUS PREPARED LEGAL GROUND "FOR INTERVENTIONIST ACTS OF FORCE AGAINST CAPITAL OF GDR." THIS CLAIM THAT BERLIN IS A PART OF FED REP IS AN "EXTRAORDINARILY SERIOUS POLITICAL MATTER" AND MUST BE "COMBATTED WITH ALL SEVERITY". KROEGER GIVES NUMEROUS CITATIONS FROM EARLY LAWS AND DECLARATIONS TO PROVE BERLIN NOT LEGALLY PART FED REP AND CLAIMS THAT SUBSEQUENT ARGUMENTS TO CONTRARY SIMPLY PROVE WEST GERMAN DESIRES TO EXPLOIT POSITION IN WEST BERLIN AGAINST GDR.

HE THEN TRIES TO PROVE, BY CITING EARLY DOCUMENTS, THAT "THE AREA OF GREATER BERLIN ACCORDING TO BINDING FOUR POWER AGREEMENTS WAS NOT AN INDEPENDENT OCCUPATION AREA IN ADDITION TO THE FOUR OCCUPATION ZONES, BUT THAT -- WITHOUT ITS

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-2- 824, JANUARY 15, 9 AM FROM BERLIN

TERRITORIAL ATTACHEMENT TO ONE OF THE OCCUPATION ZONES OF WHICH IT WAS AN INTEGRAL PART BEING AFFECTED -- IT WAS MERELY PLACED UNDER A JOINT ALLIED "ADMINISTRATION" AND OCCUPIED JOINTLY BY THE FOUR POWERS." THUS "BERLIN WAS NOT AN OCCUPIED ZONE OF ITS OWN BUT BELONGED TO THE TERRITORY OF THE SOVIET OCCUPATION ZONE." BERLIN WAS KEPT INTACT AND ADMINISTERED JOINTLY BY THE FOUR OCCUPYING POWERS IN ORDER TO PRESERVE IT AS CAPITAL OF A UNIFIED GERMANY. THUS "BERLIN WAS NEITHER IN WHOLE NOR IN PART EVER A PART OF THE OCCUPATION ZONES OF THE WESTERN POWERS." THE JOINT ADMINISTRATION OF BERLIN COULD ONLY BE LEGAL AS LONG AS POLITICAL AND ECONOMIC PRINCIPLES FOR THE TREATMENT OF GERMANY WERE OBSERVED AS SET FORTH IN POTSDAM AGREEMENT. WHILE THIS SITUATION PERTAINED, WESTERN ALLIES HAD RIGHT TO STATION TROOPS IN BERLIN AND JOINTLY WITH SOVIET COMMANDANT TO EXERCISE ADMINISTRATION OF BERLIN, "THAT IS A RIGHT TO PARTICIPATE IN THE OCCUPATION AND ADMINISTRATION OF BERLIN." THESE RIGHTS REMAINED UNCHANGED UNTIL SPLIT OF CITY IN 1948.

FAILURE TO MENTION BERLIN IN LONDON AGREEMENTS OF 1948 SHOWED THAT ALLIES REALIZED THEIR LACK OF JURISDICTION OVER BERLIN. WESTERN POWERS ALSO ACCUSED OF MAINTAINING FOUR-POWER PRETENSE REFERENCE BERLIN, WHILE AT SAME TIME PERMITTING WEST GERMAN IMPERIALISTS SEEK EXPLOIT WEST BERLIN SITUATION TO THEIR INTEREST.

HILLENBRAND

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